

DECISION



McConnele
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

19206

FILE: B-202085

DATE: August 21, 1981

MATTER OF: Broken Lance Enterprises

DIGEST:

While GAO continues to review mistake-in-bid claims alleged prior to award, where contract is being performed and there is factual dispute as to whether mistake was alleged before award was made, matter is appropriate for resolution under the disputes procedures provided by Contract Disputes Act of 1978 rather than by GAO.

Broken Lance Enterprises, Inc., protests the award of a contract to it by the Department of the Army for dining facility attendant services at Fort Drum, New York. Broken Lance alleges that the award was made improperly because the contracting officer was on notice of a mistake in its bid. We find that the matter is appropriate for resolution under the disputes clause of the contract.

The Contract Disputes Act of 1978, 41 U.S.C. §§ 601-613 (Supp. III 1979), requires that all claims "relating to" a contract be filed with the contracting officer for a decision. 41 U.S.C. § 605(a). In addition, a contractor may appeal an adverse contracting officer decision either to the contracting agency's board of contract appeals or to the United States Court of Claims. 41 U.S.C. §§ 606, 609. The disputes clause incorporated by reference into Broken Lance's contract reflects those provisions.

[Protest Alleging Mistake in Bid]

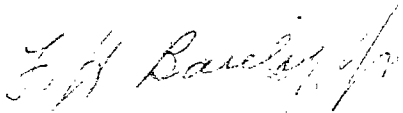
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Although Broken Lance styles its complaint a "protest", it is actually a mistake-in-bid claim. This Office has traditionally considered mistake-in-bid claims. We recently held, however, that mistake claims alleged after award are ones relating to a contract and that under the Contract Disputes Act such claims properly should be processed in accordance with the provisions of the Act. Sphere Management, Inc., B-202976, May 26, 1981, 81-1 CPD 411; see Thurman Contracting Corp., B-196749, June 13, 1980, 80-1 CPD 415.

In this case, there is a factual dispute as to whether the mistake was alleged prior to award. Broken Lance asserts that its representatives informed the contracting officer at a pre-award meeting that a mistake had been discovered in its bid. The Army, however, states that Broken Lance's representatives were presented with a signed copy of the contract and a notice to proceed, and that the mistake was alleged after that time. Under these circumstances, we think the matter is appropriate for resolution in accordance with the disputes procedure of the contract, which Broken Lance has been performing, since 1) it is not clear that a pre-award allegation of mistake was made; and 2) factual disputes such as this one can best be resolved through the appeal procedure available to Broken Lance under the contract Disputes Act. Cf. Ziegler Steel Service Corp., B-195719, January 14, 1980, 80-1 CPD 40, where we considered a mistake claim because in part there was no factual dispute involved.

Accordingly, the mistake claim is dismissed.

For 
Harry R. Van Cleve
Acting General Counsel